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U.S. DISTRICT COURT
DISTRICT OF UTAH

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Attorneys for Defendant Express Scripts, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

WORKING RX, L.C., a Utah limited liability
company,

Plaintiff,

v.

EXPRESS SCRIPTS, INC., a Delaware
corporation,

Defendant.

Case No. 2:00CV931K

Judge Dale A. Kimball

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Under Fed. R. Civ. P. 56, Defendant Express Scripts, Inc. ("ESI") moves this Court to enter summary judgment dismissing all of the claims of Plaintiff Working RX, L.C. ("WRX").

ESI is entitled to summary judgment for the following reasons:

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1. As a matter of law, WRX cannot show any of the three elements required for proving its unjust enrichment claim. WRX did not confer any direct benefit on ESI, while ESI had no knowledge or appreciation of receiving any benefit from WRX. In addition, under the undisputed facts, it would not be inequitable for ESI to keep its contract earnings.

2. As a matter of law, ESI is entitled to judgment on WRX's conversion claim because ESI acted pursuant to its PBM and network contracts, and did not misappropriate WRX's claims.

3. As a matter of law, ESI is entitled to judgment on WRX's tortious interference claim because ESI did not interfere with any contract and did not act with any improper purpose or means.

4. As a matter of law, ESI is entitled to judgment on WRX's injunction claim, which is totally dependent on its conversion and tortious interference claims.

This Motion is supported by an accompanying memorandum, the Declaration of Thomas Isaacs, and the allegations of the Second Amended Complaint.

DATED this 15th day of October, 2001.

RAY, QUINNEY & NEBEKER



Keith A. Kelly

HUSCH & EPPENBERGER, LLC
Lowell D. Pearson

Attorneys for Defendant Express Scripts, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2001, I caused a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to be hand-delivered to the following:

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